

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #10	CCRB Case #: 201907335	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/18/2019 10:38 PM	Location of Incident: Schenectady Avenue between Eastern Parkway and Union Street	Precinct: 77	18 Mo. SOL 2/18/2021	EO SOL 10/5/2021	
Date/Time CV Reported Mon, 08/19/2019 12:07 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 08/19/2019 12:07 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Mancilla	23627	964134	077 PCT
2. POM Jose Agudelo	13992	961596	077 PCT
3. POM Tomas Campuzano	21584	959530	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Tomas Campuzano	Abuse: Police Officer Tomas Campuzano frisked § 87(2)(b)	
B.POM Tomas Campuzano	Abuse: Police Officer Tomas Campuzano searched § 87(2)(b)	
C.POM Jose Agudelo	Abuse: Police Officer Jose Agudelo searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Michael Mancilla	Abuse: Police Officer Michael Mancilla searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On August 19, 2019, § 87(2)(b) filed this complaint with the CCRB online.

On August 18, 2019, at approximately 10:38 p.m., in the vicinity of Schenectady Avenue between Eastern Parkway and Union Street in Brooklyn, PO Tomas Campuzano, PO Jose Agudelo, and PO Michael Mancilla, all of the 77<sup>th</sup> Precinct, pulled over the vehicle that § 87(2)(b) was driving for failure to use his turn signal. PO Agudelo told § 87(2)(b) that he smelled marijuana in the car and asked § 87(2)(b) to step out of the car. PO Campuzano patted down § 87(2)(b) pants pockets (**Allegation A: Abuse of Authority – Frisk,** § 87(2)(g)) and then allegedly put his hands into § 87(2)(b) s pants pockets (**Allegation B: Abuse of Authority – Search (of person),** § 87(2)(g)). PO Mancilla and PO Agudelo then searched the interior and trunk of § 87(2)(b) s car (**Allegations C and D: Abuse of Authority – Vehicle Search,** § 87(2)(g)). § 87(2)(b) was subsequently released with a moving summons for failing to signal.

§ 87(4-b), § 87(2)(g)

Body-worn camera footage was obtained from PO Campuzano (**BR 03**), PO Agudelo (**BR 04**), and PO Mancilla (**BR 05**). The relevant portions are discussed below. There was no other video of the incident.

§ 87(2)(g)

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Tomas Campuzano frisked** § 87(2)(b).

**Allegation (B) Abuse of Authority: Police Officer Tomas Campuzano searched** § 87(2)(b).

**Allegation (C) Abuse of Authority: Police Officer Jose Agudelo searched the vehicle in which** § 87(2)(b) **was an occupant.**

**Allegation (D) Abuse of Authority: Police Officer Michael Mancilla searched the vehicle in which** § 87(2)(b) **was an occupant.**

It was undisputed that PO Campuzano frisked § 87(2)(b) and that PO Agudelo and PO Mancilla searched § 87(2)(b) s car. Disputed was whether there was an odor of marijuana in the car and whether PO Campuzano searched § 87(2)(b).

§ 87(2)(b) (**BR 06**) stated that after he provided PO Agudelo with his license, registration, and insurance information, they walked to the back of his car and had a brief discussion that § 87(2)(b) could not hear. Upon their return, PO Campuzano and PO Agudelo told § 87(2)(b) that they smelled marijuana and asked him to step out of the car. Initially, § 87(2)(b) refused because he did not think that he had committed any moving violations, his paperwork was in order, there was no smell of marijuana or any physical marijuana in the car or on his person, and § 87(2)(b) had not recently smoked marijuana or been around anyone who had. However, because he did not want to escalate the situation, § 87(2)(b) stepped out of the car.

As soon as § 87(2)(b) was out of the car, PO Campuzano patted down the exterior of § 87(2)(b) pants and pants pockets, which were empty. PO Campuzano then put his hands into § 87(2)(b) s pants pockets but did not remove anything. PO Campuzano walked § 87(2)(b) to the back of his car while PO Agudelo and PO Mancilla searched § 87(2)(b) s car. § 87(2)(b) could not clearly see everywhere that they searched but saw them look in the center consoles in the front and back seats, the glove compartment, underneath the front seats, and in the storage compartments on the inside of the doors.

After searching the main body of the car, PO Mancilla told § 87(2)(b) to go back into

his car and open the trunk, which § 87(2)(b) did. § 87(2)(b) could not see where within the trunk the officers were searching, but he heard them moving items around. None of the officers recovered anything from the search, and PO Mancilla gave § 87(2)(b) a summons for failing to signal (**BR 01**).

PO Agudelo (**BR 07**) stated that after § 87(2)(b) pulled over, he and PO Campuzano approached § 87(2)(b) at the front driver's side door. Immediately upon approach, PO Agudelo smelled the aroma of marijuana coming from inside the car. However, he did not know from where inside the car the aroma was coming or if the marijuana was burnt or unburnt. PO Mancilla and PO Campuzano confirmed with PO Agudelo that they had also smelled marijuana.

PO Agudelo asked § 87(2)(b) to step out of the car, and PO Campuzano patted him down, but PO Agudelo could not recall where on § 87(2)(b) body PO Campuzano patted down. PO Agudelo did not see anything on § 87(2)(b) that appeared to be a weapon and did not suspect that he was in possession of a weapon. PO Campuzano never explained to PO Agudelo why he patted down § 87(2)(b). PO Agudelo did not see if PO Campuzano put his hands into any of § 87(2)(b) pockets.

PO Agudelo asked § 87(2)(b) to step to the trunk area of his car, and PO Agudelo and PO Mancilla searched the front and back driver's side and passenger side of § 87(2)(b) car because they had smelled marijuana coming from inside, and PO Campuzano searched the trunk, also because of the aroma of marijuana inside the vehicle. They did not recover anything from the vehicle search.

§ 87(2)(g)

PO Mancilla stated that after § 87(2)(b) pulled over, he approached § 87(2)(b) car and stood by the trunk. From where he was standing, he smelled the aroma of marijuana coming from the car, but he could not tell where it was coming from or if it was burnt or unburnt. PO Mancilla could not recall if either PO Agudelo or PO Campuzano patted § 87(2)(b) down or put their hands into any of his pockets. PO Mancilla could not recall if he saw anything that looked like a weapon on § 87(2)(b) person, nor could he recall if he suspected that § 87(2)(b) was in possession of a weapon.

Once § 87(2)(b) was outside of the car, PO Mancilla searched the car from "bumper to bumper" because of the aroma of marijuana. There was no other reason why he searched the car. PO Mancilla explained that he searched the front and back interior of the car, where he also smelled the aroma of marijuana, and the trunk of the car. PO Mancilla could not recall if PO Agudelo or PO Campuzano also assisted in his search of the car.

§ 87(2)(g)

Once § 87(2)(b) was outside of the car, PO Campuzano patted down § 87(2)(b) waist area for safety purposes because he always pats people down when they step out of cars. PO Campuzano did not see anything on § 87(2)(b) that he suspected was a weapon and did not have any specific reason why he thought that § 87(2)(b) might have had a weapon. PO Campuzano could not recall if he went into any of § 87(2)(b) pockets. PO Campuzano could not recall who searched § 87(2)(b) car or if he searched any part of the car. However, he stated that the reason for any search was because of the odor of marijuana.

In PO Campuzano's body-worn camera footage (**BR 03**), beginning at 1:26 minutes, PO Campuzano asks § 87(2)(b) "When was the last time anyone smoked in this vehicle?" § 87(2)(b) replies that he is an athlete and does not smoke. PO Campuzano repeats the question, and § 87(2)(b) asks, "Smoked what?" PO Campuzano answer, "Weed." § 87(2)(b) tells PO Campuzano that no one smoked weed in his car. PO Campuzano asks § 87(2)(b) to step out of the car, and, at 2:51 minutes, PO Campuzano bends forward toward § 87(2)(b) waist area. It is not clear in the frame where PO Campuzano's hands are or if he puts his hands into § 87(2)(b) pants pockets. At 3:46 minutes, PO Campuzano tells § 87(2)(b) "I smell narcotics coming out of the vehicle, so I have every right to search." § 87(2)(b) replies that

he does not smoke any narcotics, he does not have any friends who smoke narcotics, and that there are no narcotics in his car.

PO Mancilla's body-worn camera footage § 87(2)(g)

At 3:14 minutes, PO Mancilla begins searching the interior of § 87(2)(b)'s car. At 6:40 minutes, PO Mancilla and PO Agudelo search the trunk of the car.

PO Agudelo's body-worn camera footage (**BR 04**) is consistent with those of PO Campuzano and PO Mancilla.

§ 87(2)(g)

PO Campuzano stated that the reason for the frisk was solely for safety purposes because that is his normal procedure when people step out of a car. No evidence of marijuana was recovered from § 87(2)(b)'s car. In dispute was whether there was an aroma of marijuana coming from the car, which § 87(2)(b) denied, and whether PO Campuzano searched § 87(2)(b)

According to People v. Chestnut, 43 A.D.2d 260 (1974) (**BR 10**), the smell of marijuana smoke, with nothing more, can be sufficient to provide officers with probable cause to search an automobile and its occupants.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 12**).
- PO Mancilla has been a member of service for two years, and this is the first CCRB complaint to which he has been a subject.
- PO Agudelo has been a member of service for three years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)
- PO Campuzano has been a member of service for four years, and this is the first CCRB complaint to which he has been a subject.
- § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On December 10, 2019, a Notice of Claim was submitted to the Comptroller's office, the results of which will be added to the case file upon receipt (**BR 13**).

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Squad No.: 10

Investigator: Maura Roche      SI Maura R. Roche      9/17/2020  
Signature      Print Title & Name      Date

Squad Leader: Eric Rigie      IM Eric Rigie      9/17/2020  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date